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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/073,932	02/14/2002	Michio Morikawa	04632.0045	5319
7590	01/05/2005			
Finnegan, Henderson, Farabow, Garrett & Dunner, L.L.P. 1300 I Street, N.W. Washington, DC 20005-3315			EXAMINER LUK, EMMANUEL S	
			ART UNIT 1722	PAPER NUMBER

DATE MAILED: 01/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/073,932

Applicant(s)

MORIKAWA, MICHIO

Examiner

Emmanuel S. Luk

Art Unit

1722

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 26 October 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-4,8 and 9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4,8 and 9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hayashi (4880375) in view of Cimenti (5862743).

Hayashi teaches a lower frame (Fig. 3), upper frame (Fig. 39), a cluster of extending rollers (33), means (41) for moving the upper frame up and down, toward and away from the lower frame, the feeding in conveyor and the feeding out conveyor (9,19), and the upper frame being pivotally mounted (Fig. 6, 7).

Hayashi fails to teach the upper frame having a box-shaped cover.

Cimenti teaches a cover (1) and removable cover (11) and the rollers (32-37) are situated within the cover. Hayashi shows rollers that are movable and are connected to a frame. Cimenti teaches a cover that surrounds the rollers, thus it would have been

obvious to one of ordinary skill in the art to modify Hayashi with a box-shaped cover around the rollers as taught by Cimenti to provide a housing for the rollers.

4. Claims 2-4, 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hayashi (4880375) in view of Cimenti as applied to claim 1 as shown above, and further in view of Hayashi (4631017) and Morikawa (5783218).

Hayashi fails to teach the inclined conveyors, the distances between conveyors to the rollers and the upper frame is pivotally mounted to the lower frame at a downstream part of the food-conveying member.

Hayashi teaches the claimed apparatus having a frame with a cluster of a plurality of extending rollers (5) that arranged to be endless and rotatable, the food conveying member having a feeding in conveyor (2) and a part is guided by a belt guiding member (3), and a feeding out conveyor (4). The conveyors having a lowered position from the rollers (Ta,Tc). The rollers located on an upper frame (12) that is movable away from the lower portion (3).

Morikawa teaches a cluster of a plurality of extending rollers (5) and the food conveying member (2), the feeding in portion (31,32) of the belt being inclined and the feeding out portion (34,35) of the belt is also inclined.

It would have been obvious to one of ordinary skill in the art to modify Hayashi (4880375) with conveyors as taught by Hayashi (4631017) because it allows for the material to be fed to the rollers to be shaped and to have the conveyors being inclined

as taught by Morikawa (5783218) because it allows for an arc thereby improving the performance (Col. 2, lines 7-25).

In regards to claims 8 and 9, the upper frame is pivoted using the worm and gear (57,59) this can be mounted to the lower frame, and the structure (Fig. 7) can be seen extending downward to where the lower frame will be located. The pivoting is considered downstream from where the food material first enters the food conveying member.

### ***Response to Arguments***

5. Applicant's arguments filed 10/26/04 have been fully considered but they are not persuasive. The applicants have amended the claims and provided a box-shaped cover to the upper frame. However, Cimenti teaches this feature of a box-shaped cover that and it would have been obvious that it would cover only the upper frame when applied to the rollers in Hayashi.

### ***Conclusion***

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within

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TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Emmanuel S. Luk whose telephone number is (571) 272-1134. The examiner can normally be reached on Monday-Thursday 7 to 4 and alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ben Utech can be reached on (571) 272-1137. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
BENJAMIN L. UTECH  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1700

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